(2) Supreme Court, U.S.
FILED
02 730 SEP 26 2002
OFFICE OF THE CLERK

No. _____

In the

SUPREME COURT OF THE UNITED STATES

SUSAN M. MORLEY

Petitioner,

V.

ROBERT A. BRADY, HOLLY J. FORD, JON MARSHALL, GEORGE J. SPARTA, and DEMOCRATIC CITY COMMITTEE

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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SUPPLEMENTAL APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

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16 pp

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SUSAN M. MORLEY	:	CIVIL ACTION
	:	NO. 01-4484
Plaintiff,	:	
	:	
v.	:	
	:	
Robert A. Brady, et al	:	
	:	
	:	
Defendants.	:	FILED NOV 13 2001

ORDER

AND NOW, this **9th** day of **November, 2001**, following a hearing on defendant's Motion to Dismiss (doc no. 7) held on November 8, 2001, it is hereby **ORDERED** that said motion is **GRANTED** and this case is **DISMISSED** without prejudice for lack of subject matter jurisdiction. 1

AND IT IS SO ORDERED.

/s/ Eduardo C. Robreno
EDUARDO C. ROBRENO

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1. The Rooker-Feldman doctrine "preclud[es] lower federal court jurisdiction over claims that were actually litigated or inextricably intertwined with adjudication by a state's courts." Parkview Associates Partnership v. City of Lebanon, 225 F.3d 321, 325 (3d Cir. 2000) (quotations omitted). [A] federal action is inextricably intertwined with a state adjudication, and thus barred in federal court under Feldman, "[w]here federal relief can only be predicated upon a conviction that the state court was wrong." Id (quoting Centifanti v. Nix, 865 F.2d 1422, 1430 (3d Cir. 1989).

In the instant case, plaintiff seeks review of a state court decision refusing to name her to a vacancy on a campaign ballot in the general election for a position of Judge of Election when the candidate who was successful in the primary withdrew his candidacy after the state court determined that he would be ineligible for the position. Since the relief sought by plaintiff effectively would constitute a review of a state court decision, a lower federal court is without subject matter jurisdiction to entertain the action.

App. 3

UNREPORTED-NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 01-4164

SUSAN MORLEY,
Appellant

v.

ROBERT A. BRADY; HOLLY J. FORD;
JON MARSHALL; GEORGE J. SPARTA
DEMOCRATIC CITY COMMITTEE

On Appeal From the United States
District Court for the Eastern District
of Pennsylvania (D.C. Civil 01-cv-04484)
District Judge: Honorable
Eduardo C. Robreno

Submitted Under Third Circuit LAR 34.1(a)
July 10, 2002

Before: RENDELL, ALDISERT, and GREENBERG,
Circuit Judges.

(Filed JUL 12 2002)

OPINION

PER CURIAM

In September 2001 Susan Morley filed a civil rights action arising out of her candidacy for the office of Judge of Election in the Second Ward, Twenty-fourth Division, Philadelphia. in her complaint she alleges that in March 2001 her rival candidate, defendant Sparta, filed a petition to set aside her nomination in the Court of Common pleas, Philadelphia County. The Court ordered that unless timely amendments corrected the defects in Morley's nomination petition, it would set aside the petition. Morley corrected the defects, ran against Sparta in the May 15,

2001 primary, and lost. Shortly thereafter, Morley learned that Sparta works for the United States Department of the Treasury and filed a petition to set aside his nomination because the Pennsylvania Election Code prohibits government workers from acting as election officials; Morley asked the court to certify herself as the Democratic nominee. Sparta admitted at a subsequent hearing that he worked for the Mint and withdrew his nomination, but the court did not grant the relief sought by Morley. Instead, it declared a "vacancy" for the for the Democratic candidate and ordered defendant Democratic City Committee to fill the vacancy pursuant to state law Morley's husband then wrote a letter to

the Democratic City Committee stating that Morley should be the substituted candidate, and that if the Committee did not choose Morley she would file a lawsuit in federal court. The Committee did not do so and this action followed. According to Morley, the defendants conspired to deprive her of her civil right to be a candidate for public office and abused civil proceedings in the process. She seeks, inter alia, punitive damages.

The defendants moved to dismiss, arguing that Morley's complaint effectively seeks review of a state court decision and is thus barred by the Rooker-Feldman doctrine and that Morley fails to state a claim. After a hearing, the

district court agreed that it lacked jurisdiction pursuant to Rooker-Feldman and dismissed the complaint without prejudice because the complaint effectively seeks review of a state court decision refusing to name Morley to the vacancy created by Sparta's withdrawal. The court also indicated at the hearing that it did not believe Morley had stated a claim, in part because she was a candidate in the election.

I

On appeal Morley argues that her case is not barred by Rooker-Feldman because in state court she sought equitable relief: certification as the democratic nominee for the position of Judge of Election.

Here, by contrast, she seeks damages arising out of a conspiracy to deprive her of her civil right to be a candidate She states that she does not seek review of the state court decision but nevertheless argues that the state court decision was wrong.

Based on the record before us, we agree with Morley that her complaint is not barred by the Rooker-Feldman doctrine.1

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1 It is true that Morley challenges the correctness of the state court decision in her brief on appeal. However, her complaint does not appear to present such a challenge. To the extent it does, the challenge is barred by Rooker-Feldman.

That doctrine "preclud[es] lower federal court jurisdiction over claims that were actually litigated or 'inextricably intertwined' with adjudication by a state's courts." Parkview Associates Partnership v. City of Lebanon, 225 F.3d 321, 325 (3d Cir. 2000) A federal action is "inextricably intertwined" "[w]here federal relief can only be predicated upon a conviction that the state court was wrong." Centifanti v. Nix, 865 F.2d 1422, 1430 (3d Cir 1989).

Neither test bars Morley's complaint. It appears from the record that the state court was not asked to address whether the defendants here conspired to deny Morley her right to be a candidate

and abused civil proceedings to do so. Rather, she merely sought to be certified as the Democratic nominee in light of Sparta's status as an employee of the Mint. Accordingly, the pertinent state court order merely states; "George Sparta having withdrawn his name from nomination...a vacancy is declared for Democratic candidate for Judge of Election....Such vacancy shall be filled pursuant to procedures set forth in 25 P.S. subsection 2939." The order says nothing about the conduct of the defendants. For these reasons, based on the record before us we cannot conclude that the claims in Morley's complaint were "actually litigated" in state court.

Nor were they "inextricably intertwined." Whether the state court was correct not to declare Morley the Democratic candidate following Sparta's withdrawal is a completely separate question from whether the defendants conspired to violate Morley's rights; answering the latter question does not entail review, express or implied, of the state court's decision.

However, although we agree with Morley that Rooker-Feldman does not bar her complaint, we agree with the appellees that the complaint fails to state a claim. "[I]t is settled in this circuit that a civil rights complaint under subsection 1983 must set forth with factual specificity the conduct of the defendants

alleged to have harmed the plaintiff." Darr v. Wolfe, 767 F.2d 79, 80 (3d Cir 1985). Aside from the fact that Morley *did* run as a candidate against Sparta, her complaint is devoid of specific factual allegations supporting the contention that the defendants conspired to do , or indeed did, anything illegal or otherwise wrong, either before or after Sparta's withdrawal.

Accordingly, we shall affirm the order of the district court.

PS Merits #173

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 01-4164

SUSAN MORLEY,
Appellant

v.

ROBERT A. BRADY; HOLLY J. FORD;
JON MARSHALL; GEORGE J. SPARTA
DEMOCRATIC CITY COMMITTEE

On Appeal From the United States
District Court for the Eastern District
of Pennsylvania (D.C. Civil 01-cv-04484)
District Judge: Honorable
Eduardo C. Robreno

Present: BECKER, Chief Judge, SLOVITER,
SCIRICA, NYGAARD, ALITO, ROTH, MCKEE,
RENDELL, BARRY, AMBRO, FUENTES, ALDISERT*,
AND GREENBERG**, Circuit Judges

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* Hon. Ruggero J Aldisert, Senior Judge of the United States Court of Appeals for the Third Circuit; vote limited to panel hearing only.

** Hon. Morton I. Greenberg, Senior Judge of the United states Court of Appeals for the Third Circuit; vote limited to panel hearing only.

The petition for rehearing filed by appellant having been submitted to all judges who participated in the decision of this court, and to all other available circuit judges in active service, and no judge who concurred in the decision having asked for rehearing and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is hereby DENIED.

BY THE COURT:

/s/ Marjorie O. Rendell
Circuit Judge

Dated: AUG 30 2002